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|   |  |
|---|--|
| <b>Send to:</b><br>Nancy Johnson<br>Senior Petitions Attorney | <b>From:</b><br>Jennifer H. Hamilton   |
| <b>Company:</b><br>U.S. Patent and Trademark Office           | <b>Date:</b><br>June 2, 2008           |
| <b>Fax Number:</b><br>571/273-8300                            | <b>Phone Number:</b><br>(818) 488-8141 |

- ☐ Urgent  
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☐ Please comment  
☐ Please review  
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Total pages, including cover: 14**Comments:**

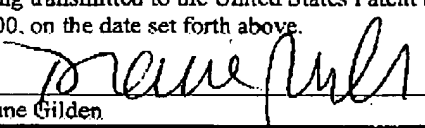
|                               |   |
|-------------------------------|---|
| Inventor:                     | GHARAPETIAN, Ara H.   |
| U.S. Appln. No.:              | 10/037,208  |
| Filing Date:                  | January 4, 2002   |
| Title:                        | SYSTEM FOR TRANSMITTING CONTROL COMMANDS<br>TO ELECTRONIC DEVICES |
| The Eclipse Group Docket No.: | HI06036USU (P01003US)   |

**Please acknowledge receipt of the following Renewed Petition under 37 CFR 1.137(b):**

1. Renewed Petition under 37 CFR 1.137(b) (2 pages) & duplicate (2 pages);
2. Statement of Jennifer H. Hamilton (3 pages);
3. Exhibit A to Statement of Jennifer H. Hamilton (1 page); and
4. Decision on Petition (5 pages).

**CERTIFICATE OF TRANSMISSION**

I hereby certify that this document (along with any papers referenced as being attached or enclosed) is being transmitted to the United States Patent and Trademark Office via facsimile to Fax No. (571) 273-8300, on the date set forth above.

  
Diane Gilden**BEST AVAILABLE COPY**

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PATENT

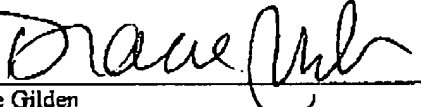
The Eclipse Group Docket No. HI06036USU (P01003US)

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

DOCKET NO.: HI06036USU (P01003US)  
APPLICANT: GHARAPETIAN, Ara H.  
TITLE: SYSTEM FOR TRANSMITTING CONTROL COMMANDS TO  
ELECTRONIC DEVICES  
SERIAL NO.: 10/037,208  
FILING DATE: January 4, 2002  
EXAMINER: Thuan N. Du  
GROUP ART UNIT: 2116  
CONFIRMATION NO.: 6472

**CERTIFICATE OF TRANSMISSION**

I certify that on 6/2/08, the  
attached correspondence is being transmitted via  
facsimile to the Commissioner for Patents at (571) 273-  
8300.

  
Diane Gilden

Attn: Nancy Johnson  
Senior Petitions Attorney  
Mail Stop Petition  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313

**RENEWED PETITION UNDER 37 CFR 1.137(b)**

Dear Ms. Johnson:

This is responsive to the Decision on Petition mailed March 31, 2008, for which a shortened statutory period for reply expires on May 31, 2008. Because May 31, 2008 occurred on a Saturday, this document is believed to be timely submitted on Monday, June 2, 2008. Therefore, this Renewed Petition is believed to have been timely filed under MPEP § 710.05.

Applicant's Petition for Revival of an Application for Patent Abandoned Unintentionally filed November 9, 2007 was dismissed because this Petition for Revival did not satisfy the

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PATENT

The Eclipse Group Docket No. HI06036USU (P01003US)

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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APPLICANT: GHARAPETIAN, Ara H.  
TITLE: SYSTEM FOR TRANSMITTING CONTROL COMMANDS TO  
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Diane Gilden  
Diane Gilden

Attn: Nancy Johnson  
Senior Petitions Attorney  
Mail Stop Petition  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313

STATEMENT OF JENNIFER H. HAMILTON

Dear Ms. Johnson:

I, Jennifer H. Hamilton, submit this statement in support of the Renewed Petition Under  
37 CFR § 1.137(b) filed concurrently herewith.

I. I am an attorney employed by The Eclipse Group LLP, an intellectual property  
law firm, and a registered patent attorney, Reg. No. 41,814.

**RANDOLPH**

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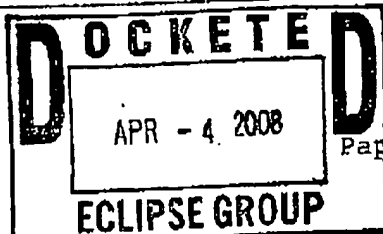
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**Exhibit A**



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MAR 31 2008

OFFICE OF PETITIONS

In re Application of  
Ara Gharapetian  
Application No. 10/037,208  
Filed: January 4, 2002  
Atty Docket No. H106036USU  
(P01003US)

DECISION ON PETITION

This is a decision on the PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b) filed November 9, 2007.

The petition is DISMISSED.

Any request for reconsideration of this decision must be submitted within **TWO (2) MONTHS** from the mail date of this decision. Extensions of time under 37 C.F.R. § 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 C.F.R. § 1.137(b)."

The above-identified application became abandoned effective September 9, 2005, for failure to file a timely reply to the final Office action mailed June 8, 2005. This Office action set a shortened statutory period for reply of three (3) months, with extensions of time obtainable under § 1.136(a). A courtesy Notice of Abandonment was mailed on April 10, 2006.

The petition includes a proposed reply in the form of a request for continued examination and submission under § 1.114 (and RCE fee), a statement of unintentional delay and payment of the petition fee set forth in 37 CFR § 1.17(m). No terminal disclaimer is deemed required at this time. However, the

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Instant petition is not grantable because it does not satisfy requirement 1.137(b)(3).

35 U.S.C. 133 provides that:

Upon failure of the applicant to prosecute the application within six months after any action therein, of which notice has been given or mailed to the applicant, or within such shorter time, not less than thirty days, as fixed by the Director in such action, the application shall be regarded as abandoned by the parties thereto, unless it be shown to the satisfaction of the Director that such delay was unavoidable.

35 U.S.C. 41(a)(7) allows for payment of a fee to revive an application for a patent abandoned unintentionally. The legislative history of Public Law 97-247, § 3, 96 Stat. 317 (1982), reveals that the purpose of 35 U.S.C. 41(a)(7) is to permit the Office to have more discretion than in 35 U.S.C. 133 or 151 to revive abandoned applications in appropriate circumstances, but places a limit on this discretion stating that "[u]nder this section a petition accompanied by [the requisite fee] would not be granted where the abandonment or the failure to pay the fee for issuing the patent was intentional as opposed to being unintentional or unavoidable." H.R. Rep. No. 542, 97th Cong., 2d Sess. 6-7 (1982), reprinted in 1982 U.S.C.C.A.N. 770-71.

Implementing regulations 37 CFR 1.137(b) provides, in pertinent part, that:

If the delay in reply by applicant was unintentional, a petition may be filed pursuant to this paragraph to revive an abandoned application. A grantable petition pursuant to this paragraph must be accompanied by:

- (1) The reply required to the outstanding Office action or notice, unless previously filed;
- (2) The petition fee as set forth in § 1.17(m);
- (3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional. The Director may require additional information where there is a question whether the delay was unintentional; and

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(4) Any terminal disclaimer (and fee as set forth in § 1.20(d)) required pursuant to paragraph (d) of this section.

In this instance, the application became abandoned effective September 9, 2005. Two years elapsed without any substantive action on the part of petitioners. A power of attorney was filed on October 10, 2006. However, this petition, including the response to the Office action, was not filed until November 9, 2007. The petition includes a statement that the entire delay in filing the required reply from the due date was unintentional. Under the circumstances, additional information is requested.

The burden of proof to show that the cause of the delay was "unintentional" (or "unavoidable") is on applicant. Thus, applicant's failure to carry the burden of proof to establish that the "entire" delay was "unavoidable" or "unintentional" may lead to the denial of a petition under 37 CFR 1.137(a) or 37 CFR 1.137(b), regardless of the circumstances that originally resulted in the abandonment of the application.

It is well established that a delay resulting from a deliberately chosen course of action on the part of the applicant is not an "unintentional" delay within the meaning of 37 CFR 1.137(b). Where the applicant deliberately permits an application to become abandoned (e.g., due to a conclusion that the claims are unpatentable, that a rejection in an Office action cannot be overcome, or that the invention lacks sufficient commercial value to justify continued prosecution), the abandonment of such application is considered to be a deliberately chosen course of action, and the resulting delay cannot be considered as "unintentional" within the meaning of 37 CFR 1.137(b). See In re Application of G, 11 USPQ2d 1378, 1380 (Comm'r Pat. 1989). An intentional course of action is not rendered unintentional when, upon reconsideration, the applicant changes his or her mind as to the course of action that should have been taken. See In re Maldaque, 10 USPQ2d 1477, 1478 (Comm'r Pat. 1988). A delay resulting from a deliberately chosen course of action on the part of the applicant does not become an "unintentional" delay within the meaning of 37 CFR 1.137(b) because:

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- (A) the applicant does not consider the claims to be patentable over the references relied upon in an outstanding Office action;
- (B) the applicant does not consider the allowed or patentable claims to be of sufficient breadth or scope to justify the financial expense of obtaining a patent;
- (C) the applicant does not consider any patent to be of sufficient value to justify the financial expense of obtaining the patent;
- (D) the applicant does not consider any patent to be of sufficient value to maintain an interest in obtaining the patent; or
- (E) the applicant remains interested in eventually obtaining a patent, but simply seeks to defer patent fees and patent prosecution expenses.

Likewise, a change in circumstances that occurred subsequent to the abandonment of an application does not render "unintentional" the delay resulting from a previous deliberate decision to permit an application to be abandoned. These matters simply confuse the question of whether there was a deliberate decision not to continue the prosecution of an application with why there was a deliberate decision not to continue the prosecution of an application.

In view thereof, it is appropriate to request additional explanation as to why the delay in filing a response to the Office action and in filing a petition should be considered unintentional within the meaning of § 1.137(b).

Further correspondence with respect to this decision should be addressed as follows:

By mail:                   Mail Stop Petition  
                            Commissioner for Patents  
                            P.O. Box 1450  
                            Alexandria, VA 22313-1450

By FAX:                   (571) 273-8300  
                            ATTN: NANCY JOHNSON  
                            SENIOR PETITIONS ATTORNEY

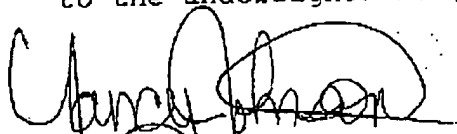


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Randolph Building  
401 Dulany Street  
Alexandria, VA 22314

Telephone inquiries specific to this matter should be directed  
to the undersigned at (571) 272-3219.



Nancy Johnson  
Senior Petitions Attorney  
Office of Petitions